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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,210	12/12/2001	Thitiwan Buranachokpaisan	D48001	8878

7590 04/20/2004

CHURCH & DWIGHT CO., INC.
469 North Harrison Street
Princeton, NJ 08543

EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/021,210	BURANACHOKPAISAN, THITIWA	
	Examiner	Art Unit	
	Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-24 are pending. Claim 24 is withdrawn from consideration, as it is directed to non-elected subject matter. The Amendment filed 12/18/03, amended claim 4. This amendment to the claim is sufficient to overcome the 35 USC 112 rejection over this claim in the previous Office Action.

103 Rejection Maintained

The rejection of claims 1-23 under 35 U.S.C. 103(a) as being unpatentable over Linn et al. (5,833,964) in view of Murphy et al. (6,468,513) and in view of Scholz et al. (6,562,360), is MAINTAINED for the reasons set forth in the Office Action mailed 12/18/03, and those found below.

Applicant argues, "As opposed to Applicant's stick product, Murphy is directed to a liquid antiperspirant composition. Accordingly, Murphy cannot be combined with Linn to demonstrate the obviousness of adding both non-liquid ester emollients and polymeric materials to a stick product. The solid nature of Applicant's stick product and the function therein of non-liquid ester emollients clearly render the teachings of Murphy inapplicable". This argument is not persuasive. First, it is respectfully pointed out that Murphy is not the primary reference, wherein the primary reference, Linn, teaches stick formulations. Second, it is respectfully pointed out that Murphy teaches that stick and liquid antiperspirants are interchangeable, conventional forms in the cosmetic antiperspirant art, see "Background of the Invention". Furthermore, it is respectfully pointed out that the Examiner has not combined the compositions of Murphy into the compositions of Linn. And lastly, the Examiner points out that the test for obviousness is not whether the features of one reference may be bodily incorporated into the

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other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art.

Applicant argues, "Scholz, which is directed to an alcohol/water hand lotion/scrub cannot be combined with Linn to demonstrate the obviousness of adding a non-liquid ester such as is found in Scholz to Applicant's stick product". This argument is not persuasive. As pointed out in the instant rejection, Scholz specifically teaches behenyl isostearate as imparting stability to cosmetic compositions. Thus, there is motivation to add this ingredient to the composition of Linn. Furthermore, it is respectfully pointed out that the addition of a non-liquid ingredient will not impart fluidity to the compositions of Linn.

Applicant argues, "The physical structure of stick products does not lend itself to simple substitution of ingredients found in liquid and gel products. Absent a clear suggestion in the art that such an addition or substitution of ingredients would be feasible, the resulting combination of ingredient cannot be deemed obvious". This argument is not persuasive. First, as pointed out above, Linn, the primary reference, is directed to stick formulations. Second, as pointed out above, Murphy teaches that stick and liquid antiperspirants are convention composition forms in the antiperspirant art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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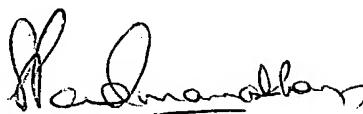
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER